

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARIA GIL,

Plaintiff,

Case No. 7:22-cv-05263-KMK

- against -

ANSWER

ALLY FINANCIAL INC., WELLS FARGO  
BANK, N.A., TOP SPEED MOTORS LLC,  
L.J. MARCHESE CHEVROLET, INC.,  
and HERSCHEYS AUTO, INC.,

Defendants.

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Defendant HERSCHEY'S AUTO, INC., incorrectly sued herein as HERSCHEYS AUTO, INC. ("Hershey's"), by its attorneys, Nicholas Goodman & Associates, PLLC, Answers the Complaint filed by Plaintiff MARIA GIL ("Plaintiff"), upon information and belief, as follows:

**AS AND FOR HERSCHEY'S RESPONSE TO PLAINTIFF'S  
PRELIMINARY STATEMENT**

1. The allegations set forth in Paragraph "1" of Plaintiff's Complaint state the nature and legal basis of the relief sought and do not require a response. To the extent a response may be required, Hershey's denies those allegations.
2. Denies.
3. The allegations set forth in Paragraph "3" of Plaintiff's Complaint state the nature and legal basis of the relief sought and do not require a response. To the extent a response may be required, Hershey's denies those allegations.

**JURISDICTION AND VENUE**

4. The allegations set forth in Paragraph "4" of Plaintiff's Complaint state a conclusion of law and do not require a response.
5. The allegations set forth in Paragraph "5" of Plaintiff's Complaint state a conclusion of law and do not require a response.

6. The allegations set forth in Paragraph “6” of Plaintiff’s Complaint state a conclusion of law and do not require a response. To the extent a response is required Hershey’s denies those allegations.

7. The allegations set forth in Paragraph “7” of Plaintiff’s Complaint state a conclusion of law and do not require a response.

### **THE PARTIES**

8. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “8” of Plaintiff’s Complaint.

9. The allegations set forth in Paragraph “9” of Plaintiff’s Complaint state a conclusion of law and do not require a response.

10. Admits only that at certain times potentially relevant herein, Top Speed operated an automobile dealership in Queens, New York, engaged in the business of purchasing and selling motor vehicles, but otherwise denies the allegations contained in Paragraph “10” of Plaintiff’s Complaint.

11. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “11” of Plaintiff’s Complaint.

12. The allegations set forth in Paragraph “12” of Plaintiff’s Complaint state a conclusion of law and do not require a response.

13. Admits.

14. Admits.

15. The allegations set forth in Paragraph “15” of Plaintiff’s Complaint state a conclusion of law and do not require a response.

16. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “16” of Plaintiff’s Complaint.

17. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "17" of Plaintiff's Complaint.

18. The allegations set forth in Paragraph "18" of Plaintiff's Complaint state a conclusion of law and do not require a response.

19. Paragraph "19" of Plaintiff's Complaint states an assertion of convenience that does not require a response.

20. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "20" of Plaintiff's Complaint.

21. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "21" of Plaintiff's Complaint.

22. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "22" of Plaintiff's Complaint.

23. The allegations set forth in Paragraph "23" of Plaintiff's Complaint state a conclusion of law and do not require a response.

24. The allegations set forth in Paragraph "24" of Plaintiff's Complaint state a conclusion of law and do not require a response.

25. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "25" of Plaintiff's Complaint.

26. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "26" of Plaintiff's Complaint.

27. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "27" of Plaintiff's Complaint.

28. The allegations set forth in Paragraph "28" of Plaintiff's Complaint state a conclusion of law and do not require a response.

29. Denies.

30. Paragraph “30” of Plaintiff’s Complaint states an assertion of convenience that does not require a response.

**AS AND FOR A RESPONSE TO PLAINTIFF’S  
FACTUAL ALLEGATIONS**

31. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “31” of Plaintiff’s Complaint.

32. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “32” of Plaintiff’s Complaint.

33. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “33” of Plaintiff’s Complaint.

34. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “34” of Plaintiff’s Complaint.

35. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “35” of Plaintiff’s Complaint.

36. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “36” of Plaintiff’s Complaint.

37. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “37” of Plaintiff’s Complaint.

38. Denies.

39. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “39” of Plaintiff’s Complaint.

40. Hershey’s denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “40” of Plaintiff’s Complaint.

41. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "41" of Plaintiff's Complaint.

42. Denies.

43. Denies.

44. Denies.

45. Denies.

46. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "46" of Plaintiff's Complaint.

47. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "47" of Plaintiff's Complaint.

48. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "48" of Plaintiff's Complaint.

49. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "49" of Plaintiff's Complaint.

50. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "50" of Plaintiff's Complaint.

51. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "51" of Plaintiff's Complaint.

52. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "52" of Plaintiff's Complaint.

53. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "53" of Plaintiff's Complaint.

54. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "54" of Plaintiff's Complaint.

55. Denies.

56. Admits.

57. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "57" of Plaintiff's Complaint.

58. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "58" of Plaintiff's Complaint.

59. Admits.

60. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "60" of Plaintiff's Complaint.

61. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "61" of Plaintiff's Complaint.

62. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "62" of Plaintiff's Complaint.

63. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "63" of Plaintiff's Complaint.

64. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "64" of Plaintiff's Complaint.

65. Denies.

**AS AND FOR A RESPONSE TO PLAINTIFF'S  
FIRST CAUSE OF ACTION  
[Violations of TILA, 15 U.S.C. §§ 1601-1667(f)]**

66. Hershey's repeats and reiterates all of its responses to the allegations contained in Paragraphs "1" through "65" of Plaintiff's Complaint as if fully set forth herein.

67. The allegations set forth in Paragraph "67" of Plaintiff's Complaint state a conclusion of law and do not require a response.

68. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "68" of Plaintiff's Complaint.

69. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "69" of Plaintiff's Complaint.

70. The allegations set forth in Paragraph "70" of Plaintiff's Complaint state a conclusion of law and do not require a response.

71. The allegations set forth in Paragraph "71" of Plaintiff's Complaint state a conclusion of law and do not require a response.

72. The allegations set forth in Paragraph "72" of Plaintiff's Complaint state a conclusion of law and do not require a response.

73. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "73" of Plaintiff's Complaint.

74. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "74" of Plaintiff's Complaint.

75. The allegations set forth in Paragraph "75" of Plaintiff's Complaint state conclusions of law and do not require a response.

76. Denies.

77. Denies.

78. Denies.

79. Denies.

80. Denies.

81. Denies.

82. Denies.

83. Denies.

84. Denies.

85. Denies.

86. Denies.

**AS AN AND FOR A RESPONSE TO PLAINTIFF'S  
SECOND CAUSE OF ACTION  
[Violations of MVRISA, N.Y. Pers. Prop. Law §§ 301-16]**

87. Hershey's repeats and reiterates all of its responses to the allegations contained in Paragraphs "1" through "86" of Plaintiff's Complaint as if fully set forth herein.

88. The allegations set forth in Paragraph "88" of Plaintiff's Complaint state a conclusion of law and do not require a response.

89. The allegations set forth in Paragraph "89" of Plaintiff's Complaint state a conclusion of law and do not require a response.

90. The allegations set forth in Paragraph "90" of Plaintiff's Complaint state a conclusion of law and do not require a response.

91. Denies.

92. Denies.

93. The allegations set forth in Paragraph "93" of Plaintiff's Complaint state conclusions of law and do not require a response.

94. Denies.

95. Denies.

96. Denies.

97. Denies.

98. Denies.

99. Denies.

**AS AND FOR A RESPONSE TO PLAINTIFF'S  
THIRD CAUSE OF ACTION  
[Violations of 49 U.S.C. § 32705 (Odometer Act)]**

100. Hershey's repeats and reiterates all of its responses to the allegations contained in Paragraphs "1" through "99" of Plaintiff's Complaint as if fully set forth herein.

101. Hershey's denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "101" of Plaintiff's Complaint.

102. The allegations set forth in Paragraph "102" of Plaintiff's Complaint state a conclusion of law and do not require a response.

103. The allegations set forth in Paragraph "103" of Plaintiff's Complaint state a conclusion of law and do not require a response.

104. Denies.

105. Denies.

106. Denies.

107. Denies.

**AS AND FOR A RESPONSE TO PLAINTIFF'S  
FOURTH CAUSE OF ACTION  
[Violations of N.Y. Gen. Bus. Law § 349(h) (Deceptive Practices)]**

108. Hershey's repeats and reiterates all of its responses to the allegations contained in Paragraphs "1" through "107" of Plaintiff's Complaint as if fully set forth herein.

109. Denies

110. Denies.

111. Denies.

112. Denies.

113. Denies.

114. Paragraph “114” of Plaintiff’s Complaint does not contain an allegation and does not require a response.

115. Denies.

116. Denies.

117. Denies.

118. Denies.

119. Denies.

120. Denies.

121. Denies.

122. Denies.

**AS AND FOR A RESPONSE TO PLAINTIFF’S  
FIFTH CAUSE OF ACTION  
[Violations of N.Y. Gen Bus. Law § 350 (False Advertising)]**

123. Hershey’s repeats and reiterates all of its responses to the allegations contained in Paragraphs “1” through “122” of Plaintiff’s Complaint as if fully set forth herein.

124. Paragraph “124” of Plaintiff’s Complaint merely quotes a statute and does not require a response.

125. Denies.

126. Denies.

127. Denies.

128. Denies.

**AS AND FOR A RESPONSE TO PLAINTIFF’S  
SIXTH CAUSE OF ACTION  
[Common Law Fraud]**

129. Hershey’s repeats and reiterates all of its responses to the allegations contained in Paragraphs “1” through “128” of Plaintiff’s Complaint as if fully set forth herein.

130. Denies.

131. Denies.

132. Denies.

133. Denies.

134. Denies.

135. Denies.

136. Denies.

**AS AND FOR A RESPONSE TO PLAINTIFF'S  
SEVENTH CAUSE OF ACTION**  
[Rescission]

137. Hershey's repeats and reiterates all of its responses to the allegations contained in Paragraphs "1" through "136" of Plaintiff's Complaint as if fully set forth herein.

138. Denies.

139. Denies.

140. Denies.

141. Denies.

142. Denies.

143. Denies.

**GENERAL DENIAL**

144. Hershey's denies each and every allegation contained in Plaintiff's Complaint that is not expressly admitted and further denies that Plaintiff is entitled to any relief or recovery whatsoever in this action.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

145. Plaintiff's Complaint fails to state a cause of action as against Hershey's upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

146. Plaintiff's causes of action are barred insofar as they are not pled with the requisite particularity.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

147. Plaintiff's causes of action are barred by the doctrines of ratification, unclean hands, and/or consent.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

148. Plaintiff's causes of action are barred by applicable statute of limitations and/or the doctrines of *res judicata*, collateral estoppel, waiver, estoppel, and/or laches.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

149. To the extent that Plaintiff suffered any damages as alleged, which Hershey's denies, Plaintiff failed to mitigate her damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

150. Hershey's hereby incorporates by reference the affirmative defenses set forth in Federal Rule of Civil Procedure 8.

**RESERVATION OF RIGHTS**

151. Hershey's expressly reserves the right to amend and/or supplement its answer, defenses, and all other pleadings. Hershey's raises each and every defense (at law, in equity, or otherwise) available under any and all federal and state statutes, laws, rules, regulations, or other creations, including common law. Hershey's has insufficient knowledge or information upon which to form a belief as to whether there may be additional affirmative defenses available to it and therefore reserves the right to assert such additional defenses based upon subsequently acquired knowledge or information that becomes available through discovery or otherwise.

**DEMAND FOR JURY TRIAL**

152. Hershey's hereby demands a jury trial of this action.

**WHEREFORE**, Hershey's requests that this Court enter an Order denying all relief sought by Plaintiff in the Complaint and rendering judgment in favor of Hershey's dismissing Plaintiff's Complaint in its entirety, with the costs and disbursements of this action, including reasonable attorneys' fees, and all other costs herein, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York  
January 13, 2023

Yours, etc.  
NICHOLAS GOODMAN & ASSOCIATES, PLLC

BY: 

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